

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

Civil Action No. 6:12-CV-499-LED

V.

TEXAS INSTRUMENTS, INC.

(LEAD CASE)

Defendants.

JURY TRIAL DEMANDED

BLUE SPIKE, LLC,

Plaintiff,

Civil Action No. 6:12-CV-576-LED

V.

AUDIBLE MAGIC CORPORATION,
ET AL.

(CONSOLIDATED WITH 6:12-CV-499)

Defendants.

JURY TRIAL DEMANDED

**AUDIBLE MAGIC, CORP.'S FIRST SET OF INTERROGATORIES
TO COUNTERCLAIM DEFENDANT BLUE SPIKE, INC.**

PROPOUNDING PARTY: AUDIBLE MAGIC, INC.
RESPONDING PARTY: BLUE SPIKE, INC.
SET NUMBER: ONE

PROPOUNDING PARTY:

RESPONDING PARTY:

SET NUMBER:

AUDIBLE MAGIC, INC.

BLUE SPIKE, INC.

ONE

Defendant and Counterclaimant Audible Magic Corporation (“Audible Magic”) hereby demands pursuant to Federal Rules of Civil Procedure 26 and 33 that counterclaim defendant Blue Spike, Inc. answer separately and fully in writing under oath the following interrogatories within thirty (30) days. The following definitions and instructions apply:

I. DEFINITIONS AND INSTRUCTIONS

1. “Blue Spike, Inc.,” “You,” or “Your” means Blue Spike, Inc., and its employees, representatives, related entities, affiliates, successors, predecessors, subsidiaries, parents, and other entities acting on its behalf.

2. “Blue Spike Patents-in-Suit” means U.S. Patent No. 7,346,472, U.S. Patent No. 7,660,700, U.S. Patent No. 7,949,494, and U.S. Patent No. 8,214,175 as well as any other patents asserted in this lawsuit.

3. “Audible Magic” means Audible Magic Corporation.

4. “Audible Magic Patent-in-Suit” means U.S. Patent No. 6,834,308.

5. “Accused Blue Spike Product” means the Giovanni Abstraction Machine.

6. “Accused Functionality” means the functionality that is accused in Blue Spike’s Infringement Contentions provided on February 26, 2014.

7. “Any” shall be understood to include and encompass “all,” and “each” shall be understood to include and encompass “every.”

8. The singular shall always include the plural and the present tense shall also include the past tense.

9. “And” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of this request any information that might otherwise be construed to be outside its scope.

10. Each interrogatory is to be answered separately and in full in writing under oath, unless all portions of an interrogatory are in good faith objected to, in which event the reasons for all of your objections shall be stated in detail. If an objection pertains to only a portion of an interrogatory, or to a word, phrase or clause contained within such interrogatory, you shall state

your objection to that portion, and shall answer the interrogatory to the extent it is not objectionable.

11. In the event that you object to any portion or subpart of these interrogatories, you shall state the objection to such portion or subpart, and shall answer any unobjectionable portion(s) or subpart(s) and/or provide the unobjectionable information requested.

12. The interrogatories are to be considered as continuing and you must provide, by way of supplementary answers, such additional information as you or any other person(s) acting on your behalf may hereafter obtain, which will supplement or otherwise modify any answers to the interrogatories.

13. Please take notice that these instructions are submitted for the purposes of discovery and are not to be taken as waiving any objections which may be made at trial to the introduction of evidence on subjects covered by these interrogatories or as an admission at the trial of the relevance or materiality of any of the matters covered by these interrogatories.

II. INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail the first public use, public disclosure, offer for sale, sale, and importation of each product or service developed, offered for sale, or sold by Blue Spike, Inc. that embodies any of the alleged invention(s) claimed in the Blue Spike Patents-in-Suit. Such description should identify each practicing or embodying product or service by name and version number and provide a chart explaining with particularity where each claim element is found within each such product or service.

INTERROGATORY NO. 2:

For all products or services identified in response to Interrogatory No. 1, describe in detail the sales, revenues, profits/losses, and customers of such products or services during the

periods of time when they practiced or embodied the claimed inventions of the Blue Spike Patents-in-Suit.

INTERROGATORY NO. 3:

Describe in detail each offer for sale, actual sale, or negotiation involving rights in any patent assigned to Blue Spike, Inc. or in any patent in which Blue Spike, Inc. has any right, interest, or title. Such offers for sale, actual sales, or negotiations of rights include, but are not limited to, any form of license, assignment, or covenant not to sue.

INTERROGATORY NO. 4:

For the Audible Magic Patent-in-Suit, state the date when you first became aware of such patent and describe the circumstances, including the person(s) who gained such knowledge and all documents that refer or relate to those circumstances.

INTERROGATORY NO. 5:

Identify all offers for sale, sales, leases, and licenses to the Accused Blue Spike Product including, for each such transaction, the model and number of units offered for sale, sold, leased, or licensed, the date of the transaction, the name of the customer, the amount paid by the customer, and all other terms of the transaction.

INTERROGATORY NO. 6:

Identify all customer (actual or potential) inquiries regarding the Accused Blue Spike Product including, for each such inquiry, the date of the inquiry, a description of the inquiry, the name of the customer, and any follow-up efforts made by you.

INTERROGATORY NO. 7:

Describe, in detail, all communications and interactions between Scott Moskowitz (CEO of Blue Spike, Inc. and named inventor on the Blue Spike Patents-in-Suit) and Muscle Fish LLC (including its principals Erling Wold, Doug Keislar, Thom Blum and Jim Wheaton or any other

employee or representative), Wired Air LLC or Audible Magic Corp. (including their principals Vance Ikezoye and Jim Schrempp or any other employee or representative).

INTERROGATORY NO. 8:

Describe, in detail, all facts, information and beliefs within the knowledge or possession of Scott Moskowitz (CEO of Blue Spike, Inc. and named inventor on the Blue Spike Patents-in-Suit) regarding the products, services or activities of Muscle Fish LLC, Wired Air LLC and Audible Magic Corp. prior to September 7, 2000.

INTERROGATORY NO. 9:

Describe, in detail, your search methodology for documents that have been or will be produced in this action, including all paper and electronic sources that have been or will be searched and the identity of all persons who are or have been custodians of any such sources.

INTERROGATORY NO. 10:

Describe, in detail, your reason for creating a webpage on blue-spike.myshopify.com offering the Giovanni[®] Abstraction Machine[™] for sale (*see* <https://web.archive.org/web/20130823173626/http://blue-spike.myshopify.com/products/giovanni-abstraction-recognition-machine>); including your reason for removing the Giovanni[®] Abstraction Machine[™] content from that site.

Dated: June 11, 2014

By:

/s/ Eric H. Findlay
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*Attorneys For Defendant and Counterclaimant
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served electronically on opposing counsel pursuant to Local Rule CV-5(a)(7)(C) on June 11, 2014.

/s/ Eric H. Findlay

Eric H. Findlay